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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,940	04/12/2002	William D. Steadman	16-054	3021

7590

04/13/2004

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EXAMINER

DEPUMPO, DANIEL G

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,940

Applicant(s)

STEADMAN, WILLIAM D.

Examiner

Daniel G. DePumpo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90-93, 95-98, 100, 102, 103, 105-112 and 114-118 is/are pending in the application.
- 4a) Of the above claim(s) 95, 96, 102, 103, 105, 108, 109 and 111 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 115-118 is/are allowed.
- 6) ☒ Claim(s) 90-93, 97, 98, 100, 106, 107, 110, 112, and 114 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 95, 96, 102-105, 108, 109 and 111 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not appear to include the following reference sign(s) mentioned in the description: recess 104 (page 10, line 13). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities: The description of the "pivoting connecting bar 48" (last paragraph, page 8) is confusing. It is unclear what element this bar "pivots" relative to. Clearly this bar pivots relative to projections 44 and 52. Apparently this bar 48 must also "pivot" relative to the frame 12 (in order to slidably move bar 54 in a direction opposite to the movement of carriage 40), however, this is not disclosed. As shown in fig. 4, there appears to be a pivot point depicted near the reference line for number 48, however, this is not discussed in applicant's specification. Clarification and/or appropriate correction are required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 93 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 93, it is unclear what "one at a time" refers to.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 90-93, 97, 98, 100 and 114 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Meier (DT 8906096) in view of Boyer and Beardshaw (UK 2,125,740).

Meier discloses a wheelchair having the structure substantially as claimed. The wheelchair includes a reclinable backrest 5, and a connection arrangement (10, 11, 12, etc.). The wheels of Meier are considered to be "removably mounted" (claim 110) to the degree claimed.

Meier does not disclose side frames interconnected by a foldable assembly, however, Beardshaw teaches a wheelchair having this common foldable assembly 30. It would have been obvious to modify Meier, by including a foldable assembly, as taught by Beardshaw to allow the wheelchair to be folded, thereby facilitating storage.

Meier also does not disclose that the seat assembly is removable. Boyer, however, teaches a wheelchair having a removable seat assembly 14. It would have been obvious to modify Meier by including a removable seat assembly, as taught by Boyer, to allow for ease of folding the wheelchair, while providing a comfortable and substantial seat.

7. Claims 106 and 107 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Meier, Boyer and Beardshaw as applied to claims 90-93, 97, 98, 100 and 114 above, and further in view of Anderson.

As set forth above, the combination teaches substantially all that is claimed, but does not teach locking members. Anderson, however, discloses locking members 38 for wheelchair

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wheels. It would have been obvious to modify the combination by including locking members as taught by Anderson, to facilitate removal of the wheels.

8. Claim 110 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Meier, Boyer and Beardshaw as applied to claims 90-93, 97, 98, 100 and 114 above, and further in view of the GB 1,321,402 reference (GB '402).

As set forth above, the combination teaches substantially all that is claimed, but does not teach that the front wheels are adjustable. However, GB '402 discloses a wheelchair having adjustable front wheels. It would have been obvious to modify the combination by including adjustable front wheels as taught by GB '402, to accommodate uneven surfaces.

9. Claim 112 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Meier, Boyer and Beardshaw as applied to claims 90-93, 97, 98, 100 and 114 above, and further in view of Koerlin.

As set forth above, the combination teaches substantially all that is claimed, but does not teach that the armrests are pivotally movable. However, Koerlin discloses a wheelchair having pivotally movable armrests. It would have been obvious to modify the combination by including pivotally movable armrests as taught by Koerlin, to facilitate entry and exit of the wheelchair user.

10. Claims 115-118 are allowed.

11. Applicant's arguments filed 2/23/04 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

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obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine each of the references has been specifically stated in the rejections above.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113.

The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel G. DePumpo
Primary Examiner
Art Unit 3611

dgd
4/6/04